

# CRIMINAL LAW JOURNAL

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## EDITORIAL

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## ARTICLES

### DISSOCIATIVE STATE AUTOMATISM AND CRIMINAL RESPONSIBILITY

#### **Stephen Gault**

Dissociative state automatism (DSA) is a defence employed in the criminal law which relates to the impaired consciousness of the accused. If it is established that an accused was in a dissociated mental state at the time of the relevant act, the law in its current form allows for a verdict of either complete acquittal or not guilty by reason of insanity. It will be argued that neither verdict represents an appropriate ascription of criminal responsibility where DSA has been established. An analysis is undertaken of the relationship between the legal concepts of volition, intention, insanity and provocation, and the type of impaired consciousness associated with DSA. This analysis demonstrates that DSA is properly understood as a partial defence related to loss of self-control which may in certain circumstances lead to a verdict of reduced culpability. Guidelines for the courts in approaching cases where DSA is in issue are proposed. .... 329

### THE RISE AND RISE OF CROWN APPEALS IN VICTORIA

#### **Richard Edney**

In recent years in Victoria there has been an acute increase in the number of Crown appeals against sentence. Indeed, in the years 2000-2001 there were nine Crown appeals which had by years 2002-2003 increased to 29. The majority of these appeals were successful. Such an increase is itself worthy of investigation, given the alleged rareness of Crown appeals in the legal tradition of Australian criminal law for reasons of fairness to the accused, in terms of double jeopardy and the associated anxiety with being sentenced again for the same offence. This article is an exploratory one to the extent that it outlines what has occurred in relation to Crown appeals against sentence in the Victorian Court of Criminal Appeal between February 2002 and February 2004, and seeks to investigate whether the substantial increase in Crown appeals in 2002-2003 is a continuing

phenomenon. In addition, a comparison will be made with the jurisdictions of New South Wales and the United Kingdom as to the incidence of Crown appeals for the purpose of ascertaining whether what has occurred in Victoria is part of a wider trend. What the findings from Victoria, as well as New South Wales and the United Kingdom, demonstrate is an extremely high success rate for such appeals. In light of that empirical evidence it will be suggested that the principles that govern Crown appeals may need to be reconsidered in the sense that what courts actually do in practice is in dissonance with those principles. .... 351

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